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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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GATEWAY, INC. ATTN: PATENT ATTORNEY 610 GATEWAY DRIVE N. SIOUX CITY, SD 57049			EXAMINER RAMAKRISHNANAH, MELUR	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/723,222

Applicant(s)

COOL, KENNETH J.

Examiner

Melur Ramakrishnaiah

Art Unit

2614

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-13 and 16-31, 33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 6-11, 13 and 16-19 is/are allowed.
- 6) ☒ Claim(s) 12, 20-31 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 12, 21, are rejected under 35 U.S.C. 103(a) as being unpatentable over Asmussen (US PAT: 7,293,279, filed 6-30-2000) in view of Takagi et al. (US PAT: 5,999,691, hereinafter Takagi) and Iggulden (US PAT: 5,999,689).

Regarding claim 12, Asmussen discloses a system for providing uninterrupted viewing of real time program during a telephone call from a caller to a user, the system comprising: means for displaying caller identification information upon receipt of the call (col. 43, line 61 – col. 44, line 7), means for detecting acceptance and termination of the call by the user, means for buffering the real-time program from the acceptance of the phone call and providing buffered program to the user upon termination of the call until the buffered program coincides with real time program (col. 44 lines 56-67; col. 45 lines 8-59; figs 25-26, col. 45 lines 41-51).

Asmussen differs from claim 12 in that he does not specifically teach the following: wherein the portion of the real time program is not buffered by the means for buffering, playing back buffered program till it coincides with real time program

However, Iggulden discloses method and apparatus for controlling a video recorder in real time to automatically identify and selectively skip segments of television

broadcast signal during recording of the television signal which teaches the following: wherein the portion of the real time program is not buffered by the means for buffering (abstract) and Takagi teaches: playing back buffered program till it coincides with real time program (this is implied in as much as the reference teaches buffered program is played out till it catches with real time program: col. 10 lines 11-22)

Thus, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify Asmussen's system to provide for the following: wherein the portion of the real time program is not buffered by the means for buffering as this arrangement would facilitate to exclude recording of unwanted portion of a television program such as commercials as taught by Iggulden, thus user can conserve recording medium; playing back buffered program till it coincides with real time program so that user can catch up with the real time program as taught by Takagi.

Regarding claim 21, Asmussen discloses an integrated system for providing uninterrupted viewing of a real time program during a telephone call from a caller to a user, the system comprising: a display configured to display the program and caller identification information upon receipt of the call (col. 43, line 61 – col. 44, line 7), a speaker configured to provide audio output for the program and the call, a microphone configured to accept audio output for the call, a user input device configured to control viewing of the program and accepting and terminating of the call by the user (col. 39 lines 53-61), a controller (in set top terminal) configured to detect acceptance of the and termination of the call by the user (col. 39 lines 19-42), a buffer (figs. 25-26) coupled to the controller, wherein the buffer is configured to initiate buffering of the real time

program from the display of caller identification for the call (see step 1443 of fig. 28a: col. 47 lines 24-32), provide buffered program to the display upon termination of the call until the buffered program coincides with real time program (abstract: col. 44, line 57 – col. 45, line 52; col. 50 lines 1-13, lines 46-52).

Asmussen differs from claim 21 in that he does not specifically teach the following: the buffer being further configured to not buffer portions of the real-time program such that when the buffer provides the buffered program for playback of the buffered program, the portions of the real-time program not buffered are not played back and buffering continues until the buffered program coincides with the real-time program.

However, Iggulden teaches the following: the buffer being further configured to not buffer portions of the real-time program, the portions of the real-time program not buffered are not played back (abstract) and Takagi teaches the following: buffer provides the buffered program for playback of the buffered program, and buffering continues until the buffered program coincides with the real-time program (col. 10 lines 11-22).

Thus, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify Asmussen's system to provide for the following: the buffer being further configured to not buffer portions of the real-time program such that when the buffer provides the buffered program for playback of the buffered program, the portions of the real-time program not buffered are not played back and buffering continues until the buffered program coincides with the real-time program as this

arrangement would facilitate to catch up with the real-time program being received without buffering portion of the real-time program as taught by the above combination.

3. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Asmussen in view of Pelletier (US PAT: 6,762,797, filed 4-14-1999).

Regarding claim 20, Asmussen discloses computer readable medium having instructions for causing a computer to execute a method for providing uninterrupted viewing of a real-time program during a telephone call from a caller to user, the method comprising the steps of: displaying caller identification information upon receipt of the call (col. 43, line 61 – col. 44, line 7), detecting the acceptance of the call by the user, buffering the real-time program from the acceptance of the call, playing back the buffered program to the user upon termination of the call until the buffered program coincides with the real time program (col. 44, line 57 –col. 45, line 51), wherein instructions (reads on VCR control instructions) cause computer (reads on VCR)to perform play back the buffered program in a manner faster than reception of the real time program (col. 46 lines 14-17; col. 50 lines 46-52).

Asmussen differs from claim 20 in that he does not specifically teach: playback of the buffered program in a faster manner is performed without user having to fast forward through portions of the buffered program.

However, Pelletier discloses method and apparatus for catch-up video viewing which teaches the following: playback of the buffered program in a faster manner is performed without user having to fast forward through portions of the buffered program (col. 1, line 45 – col. 2, line 4).

Thus, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify Asmussen's system to provide for the following: playback of the buffered program in a faster manner is performed without user having to fast forward through portions of the buffered program as this arrangement would facilitate to playback recorded program to catch up with the real broadcast program after an interruption of program viewing due to user taking telephone call etc as taught by Pelletier.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 22-23, 25, 27, 29 are rejected under 35 U.S.C 102(e) as being anticipated by Asmussen (US PAT: 7,293,279, filed 6-30-2000).

Regarding claim 22, Asmussen discloses an apparatus, comprising: means for displaying video input signal, means for recording the video input signal (figs. 25-26), means (in set top terminal) for detecting an incoming phone call (col. 39 lines 19-42), means for causing the means for recording to record the video input signal in the Event detecting means detects the incoming phone call such that the displaying means are capable of displaying the recorded video signal to user upon termination of the phone

call (abstract), wherein means for recording records the video signal prior to detection of the incoming phone call by means for detecting such that recorded video input includes a portion of the video input recorded prior to detection of an incoming phone call (step 1443 of fig. 28a; col. 47 lines 24-44) so that displaying of the buffered program includes a portion of the video input signal recorded to prior to detection of the incoming call (prior to detection of incoming call reads on buffering the program in response to communication event such as display of caller ID: col. 44 lines 57-66; col. 45, line 60 - col. 46, line 23; col. 50 lines 28-52).

Regarding claims 23, 25, 27, 29, Asmussen further teaches the following:
recording means comprises a structure selected from the group consisting of: a set top box, a computer system, a satellite receiver, a cable receiver, a network client, and a television (figs. 1-3), comprising for allowing a voice mail system to handle the incoming phone call in the event user does not answer the phone call (col. 39 lines 44-50),
detecting means further comprises means for displaying caller identification data from the incoming phone call to assist the user in selecting whether to answer the incoming call, displaying means is further capable of displaying caller identification data from the incoming call to assist user in selecting whether to answer the incoming phone call (col. 39 lines 19-42).

6. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Asmussen.

Asmussen differs from claim 24 in that although discloses recording means is capable of initiating of the video input signal upon detecting the incoming call, upon

detecting caller identification signal from the incoming phone call (step 1443 of fig. 28a), he does not specifically teach: initiating recording upon detection of ring signal etc.

However, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify Asmusen's system to initiate recording under different time scenarios in order to meet needs of the user of the system

7. Claims 28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asmusen in view of in view of Lagoni et al. (US PAT: 6,141,058, hereinafter Lagoni).

Asmusen differs from claims 28 and 30 in that he does not specifically teach: detecting means for displaying caller identification data from the incoming phone call when the caller identification data matches a predetermined list, the caller identification data displaying means otherwise not displaying the caller identification data, displaying means capable of displaying caller identification data from the incoming phone call when the caller identification data matches a predetermined list, the caller identification data displaying means otherwise not displaying the caller identification data.

However, Lagoni discloses television receiver having a user editable telephone system caller id feature which teaches: detecting means for displaying caller identification data from the incoming phone call when the caller identification data matches a predetermined list, the caller identification data displaying means otherwise not displaying the caller identification data, displaying means capable of displaying caller identification data from the incoming phone call when the caller identification data

matches a predetermined list, the caller identification data displaying means otherwise not displaying the caller identification data (abstract; col. 1, line 66 – col. 2, line 16).

Thus, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify Asmussen's system to provide for the following: detecting means for displaying caller identification data from the incoming phone call when the caller identification data matches a predetermined list, the caller identification data displaying means otherwise not displaying the caller identification data, displaying means capable of displaying caller identification data from the incoming phone call when the caller identification data matches a predetermined list, the caller identification data displaying means otherwise not displaying the caller identification data as this arrangement would provide user with means for discriminating important calls while watching television so that user can handle important calls as taught by Lagoni.

8. Claims 31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asmussen in view of Takagi as applied to claims 12 and 21 above, and further in view of Christopher (US PAT: 7,272,295).

The combination differs from claim 31 in that he does not specifically teach: portion of the real-time program that is not buffered includes any commercial advertisements in the real time program.

However, Christopher discloses commercial skip and chapter delineation feature on recordable medium which teaches the following: portion of the real-time program that is not buffered includes any commercial advertisements in the real time program (abstract).

Thus, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify the combination to provide for the following: portion of the real-time program that is not buffered includes any commercial advertisements in the real time program as this arrangement would facilitate to eliminate recording of annoying commercials so that user can save recording medium for storing desired program.

Claim 33 is rejected on the same basis as claim 31.

9. Claim 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asmussen in view of Brunelle et al. (US 2002/0172330A1, hereinafter Brunelle).

Asmussen differs from claims 26 in that he does not specifically teach: means for allowing a voicemail system to handle the incoming phone call in the event the user does not answer the incoming phone call, means for allowing voicemail system to handle incoming phone call in the event user does not answer the incoming phone call, the voicemail system being disposed in a location selected from the group consisting of: integrated within recording means, and external to the recording system.

However, Brunelle discloses method and apparatus for managing calls through an entertainment center which teaches: means for allowing a voicemail system to handle the incoming phone call in the event the user does not answer the incoming phone call, means for allowing voicemail system to handle incoming phone call in the event user does not answer the incoming phone call, the voicemail system being disposed in a location selected from the group consisting of: integrated within recording means, and external to the recording system (figs. 1-2, paragraphs: 0031, 0033).

Thus, it would have been obvious to one of ordinary skill in the art at the time invention was made to modify Allen's system to provide for the following: means for allowing a voicemail system to handle the incoming phone call in the event the user does not answer the incoming phone call, means for allowing voicemail system to handle incoming phone call in the event user does not answer the incoming phone call, the voicemail system being disposed in a location selected from the group consisting of: integrated within recording means, and external to the recording system as this arrangement would provide the user with call handling options while he is watching television as taught by Brunelle, thus providing flexibility for handling calls.

10. Claims 1-3, 6-11, 13, 16-19 allowed.

Response to Arguments

11. Applicant's arguments filed on 12-1-2008 have been fully considered but they are not persuasive.

Rejection of claims 12, 21, 22 and 32 under 35 U.S.C 112 first paragraph is maintained as set forth in the office action dated 8-25-2008 and applicant's arguments in response to the rejection are addressed here to establish applicant's specification does not disclose or explain claims limitation of claims 12, 21, 22 and 32 involved on the 112 first paragraph rejection.

With respect to claim 12, Applicant argues that "Claim 12 has been amended recites "wherein a portion of the real time program is not buffered by means of buffering". It is submitted that this recitation is clearly supported and enabled in the specification, particularly at page 6, line 18 el seq". Applicant's specification at page 6,

line 18 et seq discloses the following: Further, commercials are not buffered in one embodiment ... ". Here it does not explain how applicant avoids buffering a portion of real time program (commercials) when he is recording in as much as applicant's specification does not disclose how onset of commercials are detected in order not to buffer them other than saying it which tantamount to a wish list.

Claim 21 is in similar situation as claim 12.

With respect to claim rejection of claim 22 under 35 U.S.C 112 first paragraph, Applicant argues that "with respect to claim 22, and the questions set forth in the rejection, it is noted that in the specification, and particularly at page 6, line 28 et seq. it is disclosed that "In a further embodiment, several seconds or other predetermined time of the video or audio signals are always buffered such that replay of the buffered signals following a call occurs from a point of several seconds prior to the first indication of a call". It is submitted that one of ordinary skill in the art recognizes when a portion of the signals are always being buffered, then it is possible to buffer the signal not only after the first indication of the call, but also to retain in the buffer portion of the signal occurring before the first indication of the call". Applicant's specification at page 6, line 28 et seq discloses the following: In an alternative embodiment buffering of the video or audio signals being observed occurs at the point of presentation of caller ID information. This allows a user to fully consider the caller ID information and decide whether to accept a call without worrying about missing an important sequence. Again applicant's specification is devoid of any mechanism to carry out this. For example how presentation of caller ID triggers buffering of program being watched by a user is not

disclosed. In absence of this, the applicant has no support for this limitation in his specification.

With respect to rejection of claim 32 under 35 U.S.C 112 first paragraph, Applicant argues that " with respect to claim 32, which is now incorporated into claim 20, it is noted that the application discloses at page 6, line 19 et seq state that :[t]he buffering of real time video signal continues until the display of the buffered video is same as the real time video signal in step 345. This occurs when the program ends, or if the portions of the buffered video were played [back] faster than originally received". it is submitted that (at least) this portion of the specification program discloses to one of ordinary skill in the art that playback may occur faster than originally received without user having to fast forward through the program" . Regarding this, only credible disclosure in applicant's specification that has to do with this is: standard video controls, such as fast forward and rewind are provided via user input device (page 3, left hand column lines 6-7 of Applicant's published application US2004/0177378A1). Under these circumstances applicant's claim limitation 32 added to the claim 20 has no disclosure as claimed by the applicant in claim 20.

In view of this rejection claims 12, 21, 22, 32 under 35 U.S.C 112c first paragraph is maintained.

Regarding rejection of claim 12 under 35 U.S.C 103(a) as being obvious over Asmussen in view of Takagi et al. (US PAT: 5,999,691, hereinafter Takagi): regarding Takagi teachings, Applicant argues that "However, what is discussed ... The rejection assumes that this "catch up" must occur because a "portion of the real time program is

not buffered, but there is nothing in Takagi particularly at the referenced portion that discloses to one of ordinary skill in the art what causes or is responsible for the "catch up, between the images". Notwithstanding applicant's attempts to sow confusion into teaching of Takagi in order to undermine its teaching, Takagi clearly teaches: During high speed reproduction, after input of restart as the user input b, the high speed reproduced video chases the on-air broadcasted video image .. (col. 10 lines 11-22). this clearly teaches how catch up occurs with the real time program.

Applicant's arguments regarding amended claim 20 is mute in view of the new rejection set forth above.

Applicants arguments regarding rejection of claim 21 is similar to those made with respect to claim 12 and response made therein is also applicable to claim 21.

Regarding rejection claim 22 35 U.S.C 102(e) as being anticipated by Asmussen, Applicant makes various arguments, in particular he argues that "This portion of the patent highlighted above, discuss playback of the "portions that were missed, and the "amount of video program missed by the user", rather than playback over any other portions, especially any portion "so that displaying the buffered program includes the portion of the video input signal recorded prior to the detection of the incoming phone call" Simply because this portion of the Asmussen patent also discusses rewind and fast forward does not mean that one of ordinary skill in the art, considering this portion of the patent without knowledge of the applicant's disclosure, would recognize any ability to display the portion of the program prior to the call as well as a portion of prior to call". Regarding this, Asmussen teaches the following: The user

can thus take a particular action in response to the communication event without missing any substantial portion of the video program. For example, in response to display of an indication of an incoming telephone call (reads on applicant's: prior to the detection of the incoming phone call as disclosed by the applicant such as display of caller ID) , the user may choose to answer the telephone call while the video program is buffered (col. 44 lines 59-65). This clearly implies playback over any other portions, especially any portion "so that displaying the buffered program includes the portion of the video input signal recorded prior to the detection of the incoming phone call because the reference clearly teaches user can answer the telephone call without missing any substantial portion of the video program.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melur Ramakrishnaiah whose telephone number is (571)272-8098. The examiner can normally be reached on 9 Hr schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curt Kuntz can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melur Ramakrishnaiah/
Primary Examiner, Art Unit 2614